

REFERENCE TITLE: private prisons; capacity; notice

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SB 1548

Introduced by
Senator Brotherton

AN ACT

AMENDING SECTIONS 41-1682, 41-1683, 41-1684 AND 41-1830.31, ARIZONA REVISED STATUTES; RELATING TO PRIVATE PRISONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 41-1682, Arizona Revised Statutes, is amended to
3 read:

4 **41-1682. Private prisons: operation: capacity: notice of major**
5 incidents: financial responsibility: security
6 officer qualifications

7 A. No private prison may operate in this state unless the private
8 contractor complies with this section.

9 B. THE CAPACITY OF A PRIVATE PRISON SHALL COMPLY WITH AMERICAN
10 CORRECTIONS ASSOCIATION ACCREDITATION CAPACITY REQUIREMENTS. THE POPULATION
11 OF THE PRIVATE PRISON SHALL NOT EXCEED ITS PUBLISHED CAPACITY.

12 C. IF A MAJOR INCIDENT INVOLVING PUBLIC HEALTH OR SAFETY OCCURS AT A
13 PRIVATE PRISON, THE PRIVATE PRISON SHALL MAKE A TIMELY REPORT TO THE
14 DEPARTMENT OF ADMINISTRATION ON THE NATURE OF THE INCIDENT AND SHALL PROVIDE
15 THE DEPARTMENT OF ADMINISTRATION, THE STATE DEPARTMENT OF CORRECTIONS, THE
16 DEPARTMENT OF HEALTH SERVICES AND THE DEPARTMENT OF PUBLIC SAFETY WITH ACCESS
17 TO THE PRIVATE PRISON FACILITY FOR THE PURPOSES OF INVESTIGATION OR
18 INSPECTION. THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION MAY IMPOSE
19 CIVIL PENALTIES ON A PRIVATE PRISON THAT FAILS TO TIMELY PROVIDE THE NOTICE
20 REQUIRED BY THIS SUBSECTION. FOR THE PURPOSES OF THIS SUBSECTION, "MAJOR
21 INCIDENT" MEANS ANY OCCURRENCE THAT:

22 1. PRESENTS A SERIOUS THREAT TO THE OPERATION OF A STATE PRISON OR THE
23 HEALTH AND SAFETY OF ITS POPULATION OR ANY NEARBY COMMUNITY.

24 2. DISRUPTS ANY UTILITY OR EMERGENCY SERVICES AND THE DISRUPTION
25 REQUIRES INTERVENTION BY THIS STATE, ANY STATE AGENCY OR DEPARTMENT OR ANY
26 POLITICAL SUBDIVISION OF THIS STATE.

27 B. D A private prison shall provide the department of administration
28 with financial responsibility to cover this state's potential liability in
29 the amount of ten million dollars. The monies shall be used by the state if
30 the state is held liable for civil damages resulting from the escape of a
31 prisoner from the private prison. The private prison may file proof of
32 financial responsibility by filing one of the following:

33 1. Proof that ten million dollars is deposited in the private prison
34 escapee fund established by section 41-1830.31.

35 2. An insurance policy that is in a form approved by the department of
36 administration, that provides civil liability and civil rights liability
37 coverage in the amount of ten million dollars and ~~listing~~ THAT LISTS the
38 state as an insured.

39 3. A surety bond with the principal sum of ten million dollars.

40 4. A certified financial statement that is not more than ninety days
41 old and that shows a net worth of more than fifteen million dollars. Every
42 ninety days the private prison shall submit a certified financial statement
43 to the department of administration signed under oath by the chief financial
44 officer of the prison. If the financial statement indicates a net worth of

1 less than fifteen million dollars, the private prison shall comply with
2 ~~paragraphs~~ PARAGRAPH 1, 2 or 3 ~~of this subsection~~.

3 ~~E.~~ E. An insurance company or surety company duly authorized to
4 transact business in this state shall execute the insurance policy or bond
5 prescribed in subsection ~~B-D~~ of this section.

6 ~~D.~~ F. The insurance policy or surety bond shall continue in effect
7 until ninety days after the private prison is sold or closed. Any monies
8 deposited in the private prison escapee fund by the private prison shall be
9 refunded to the private prison within ninety days after submission of
10 evidence to the director of the department of administration that the private
11 prison is either sold or closed and there are no remaining liabilities for
12 which the state might be required to assume responsibility.

13 ~~E.~~ G. On receipt by the director of the department of administration
14 of notice to cancel an insurance policy or bond by an insurance company or
15 surety, the director **OF THE DEPARTMENT OF ADMINISTRATION** shall immediately
16 notify the private prison **NAMED** on the insurance policy or the surety bond of
17 the effective date of cancellation of the insurance policy or the surety
18 bond. The private prison shall furnish a like insurance policy or surety
19 bond within thirty days after mailing of the notice by the director **OF THE**
20 **DEPARTMENT OF ADMINISTRATION**. Unless a replacement insurance policy or
21 surety bond is filed with the director **OF THE DEPARTMENT OF ADMINISTRATION**,
22 the right of the private ~~prisons~~ PRISON to operate in this state shall be
23 suspended by operation of law on the date the bond is canceled.

24 ~~F.~~ H. If any of the monies required by subsection ~~B-D~~, paragraph 1
25 of this section are used to satisfy civil damage claims or civil rights
26 claims, the private prison shall reestablish the full amount of those monies
27 within thirty days after notification by the director of the department of
28 administration.

29 ~~G.~~ I. A security officer **WHO IS** employed by a private prison
30 contractor shall be at least twenty-one years of age and have no felony
31 convictions.

32 Sec. 2. Section 41-1683, Arizona Revised Statutes, is amended to read:
33 **41-1683. Prisoner identification; notice of transfers; civil**
34 **penalties**

35 A. Private prisons shall maintain **CURRENT** photographs and fingerprints
36 on site of all prisoners **WHO ARE** incarcerated in ~~the facility~~ PRIVATE PRISON
37 FACILITIES.

38 B. Before another state transfers prisoners to a private prison in
39 this state, **OR RETURNS PRISONERS TO THE STATE WHERE THE PRISONER WAS**
40 **SENTENCED**, the private prison housing prisoners under incarceration orders
41 from a court of another state shall provide the governor, the director of the
42 department of public safety and the director of the state department of
43 corrections with the following information:

- 44 1. The number of prisoners to be transferred.
45 2. The names of the prisoners to be transferred.

1 3. The date of the transfer.
2 4. The security level of each prisoner to be transferred, as
3 determined by the sentencing state, AND OF ANY CHANGE IN THAT PRISONER'S
4 SECURITY LEVEL AFTER TRANSFER TO THIS STATE.
5 5. THE FEDERAL IDENTIFICATION NUMBER OF EACH PRISONER TO BE
6 TRANSFERRED.
7 6. THE CHANGE IN THE PRIVATE PRISON FACILITY'S PRISONER COUNT.
8 C. If ~~one to~~ ten OR FEWER prisoners are transferred into this state,
9 the private prison shall comply with the notification requirements in
10 subsection B at least forty-eight hours before the prisoners arrive in this
11 state. If eleven or more prisoners are transferred into this state, the
12 private prison shall comply with the notification requirements pursuant to
13 subsection B at least seven days before the prisoners arrive in this state.
14 D. THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION MAY IMPOSE CIVIL
15 PENALTIES ON A PRIVATE PRISON THAT:
16 1. FAILS TO TIMELY PROVIDE THE NOTICE REQUIRED BY SUBSECTION B.
17 2. TRANSFERS A PRISONER TO A PRIVATE PRISON IN THIS STATE IN VIOLATION
18 OF SUBSECTION C.
19 D. E. The information provided pursuant to subsection B, paragraphs
20 2, 3 and 4 ~~shall~~ IS not ~~be~~ A public record until the transfer of the
21 prisoners ~~is~~ HAS BEEN completed.
22 Sec. 3. Section 41-1684, Arizona Revised Statutes, is amended to read:
23 41-1684. Release of prisoner; return to state of origin; civil
24 penalty
25 A. If a prisoner in a private prison who was sentenced by a court in
26 another state is to be released from ~~incarceration~~ CUSTODY, the private
27 prison contractor shall transfer or return the prisoner to the state where
28 the prisoner was sentenced before releasing the prisoner.
29 B. IF THE PRIVATE PRISON CONTRACTOR RELEASES A PRISONER IN THIS STATE
30 IN VIOLATION OF SUBSECTION A, THE PRIVATE PRISON CONTRACTOR IS SUBJECT TO
31 CIVIL PENALTIES.
32 Sec. 4. Section 41-1830.31, Arizona Revised Statutes, is amended to
33 read:
34 41-1830.31. Private prison escapee fund; monies; uses; lapsing;
35 definitions
36 A. A private prison escapee fund is established for the purposes of
37 providing monies to cover capture costs associated with escapees or
38 liabilities that the state may incur. The fund consists of the monies
39 deposited pursuant to subsection B of this section and section 41-1682,
40 subsection ~~B~~ D, paragraph 1. The director of the department of
41 administration shall administer the fund.
42 B. ~~At~~ A private ~~prisons~~ PRISON shall pay a penalty to the director of
43 the department of administration for the capture costs of an escapee in the
44 amount of ten thousand dollars per escapee or the actual capture costs per
45 escapee, whichever is more. The director of the department of administration

1 shall deposit the monies received from the private prison into the private
2 prison escapee fund.

3 C. Fund monies shall be used to reimburse law enforcement agencies of
4 this state for the costs incurred by them in capturing prisoners who escape
5 from private prisons.

6 D. A detailed account of the costs incurred in capturing escapees
7 shall be submitted to the director of the department of public safety and
8 reimbursed on approval by the director.

9 E. Monies in the private prison escapee fund do not revert to the
10 state general fund. The monies in the fund are a continuing appropriation to
11 the director of the department of administration for the purposes prescribed
12 in this section.

13 F. The director of the department of administration shall reimburse
14 monies deposited in the fund by private prisons as prescribed by section
15 41-1682, subsection ~~B-D~~, paragraph 1 after receiving notification from the
16 director of the ~~state~~ department of public safety to reimburse the monies.

17 G. For the purposes of this section:

18 1. "Escapee" means a prisoner who leaves a private prison facility
19 without lawful authorization and whose leaving requires law enforcement
20 personnel to undertake actions to capture the prisoner.

21 2. "Private prison" means any privately owned prison that does not
22 contract exclusively with the state department of corrections and THAT is
23 primarily directed at housing adult prisoners who are sentenced to serve a
24 term of detention or incarceration by a court from a state other than this
25 state.